



Application No. (if known): 10/084,833

Attorney Docket No.: HO-P02917US8

Certificate of Express Mailing Under 37 CFR 1.10

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, Airbill No. EV671535359US in an envelope addressed to:

MS Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on July 12, 2005
Date

Ronnie Webb

Signature

Ronnie Webb

Typed or printed name of person signing Certificate

Registration Number, if applicable

(713) 651-5146

Telephone Number

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

Amendment (9 pages)
Amendment Transmittal (1 page)
Postcard
Copy of Office Action (7 pages)



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,833	02/26/2002	Frederick L. Jordan	HO-P0291US8	4096
26271	7590	05/31/2005		
FULBRIGHT & JAWORSKI, LLP			EXAMINER	
1301 MCKINNEY			TOOMER, CEPHIA D	
SUITE 5100				
HOUSTON, TX 77010-3095			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

O I P E
JUL 12 2005
PATENT & TRADEMARK OFFICE

RECEIVED	<i>[Signature]</i>
JUN 06 2005	
Docket:	<u>P02917058</u>
Client:	<u>Onyx</u>
Attorney:	<u>JES</u>



Office Action Summary

Application No.	Applicant(s)	
10/084,833	JORDAN, FREDERICK L.	
Examiner	Art Unit	
Cephia D. Toomer	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 February 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 43-50,52-60,70-77 and 79-90 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 52-60,70-77,79-84,89 and 90 is/are allowed.
- 6) Claim(s) 43-45,48,50 and 85-88 is/are rejected.
- 7) Claim(s) 46,47 and 49 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

This office action is in response to the amendment filed February 8, 2005 in which claims 25-42, 60-68 and 69 have been canceled; claim 70 has been amended and claims 79-90 were added.

The rejection of the claims under 35 USC 102 b is withdrawn in view of Applicant canceling the claims in question.

The rejection of the claims under 35 USC 103 over Kirk is withdrawn in view of Applicant canceling the claims in question.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 85-88 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 85 is rejected because claim 84 is directed to a fuel additive and not a fuel.

Claim 86 is rejected because claim 83 is limited to beta-carotene as the carotenoid.

Claims 87 and 88 are rejected because they are dependents of a canceled claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Finnan (US 4,504,499).

Finnan teaches a heat-stabilized carotenoid-colored edible oil comprising stabilizing amounts of at least one of the following antioxidants (thermal stabilizer): lauryl thiopronate, dilauryl thiopropionate, a tocopherol and mixtures thereof (see abstract). The edible oil may be wheat-germ oil (see col. 2, lines 55-65) and the carotenoid may be beta-carotene or lycopene (see col. 1, lines 48-60; Example 1). The carotene is suspended in an edible oil such as peanut oil (may also function as a thermal stabilizer)(see col. 3, lines 62-65). Finnan is not directed to a fuel additive; however, since the claims are directed to a composition, Applicant's intended use is given no patentable weight.

5. Claims 43-45, 48 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujiwara (US 5,705,526).

Fujiwara teaches a composition comprising lycopene, beta-carotene, alpha-carotene, d-alpha-tocopherol and a mixture of wheat-germ oil and a vegetable oil (see abstract). Fujiwara also teaches that the composition may comprise a solvent and a dispersant (see col. 3, lines 51-56). The carotene of the example is dispersed in palm

oil (see col. 5, line 2). Fujiwara is not directed to a fuel additive; however, since the claims are directed to a composition, Applicant's intended use is given no patentable weight.

6. Claims 46, 47 and 49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 46, 47 and 49 are objected to because the prior art fails to teach or suggest a resid fuel additive comprising an oil extract that is barley, contains meadow foam oil as the thermal stabilizer or that the additive contains a solvent.

7. Claims 52-60, 70-77, 79-84, 89 and 90 are allowable because the prior art fails to teach or suggest a resid fuel composition comprising a base fuel and an additive comprising a plant oil extract derived from grain; a carotenoid and a thermal stabilizer.

Claim 84 are allowable because the prior art fails to teach or suggest a fuel additive comprising a plant oil extract derived fro barley, beta-carotene and a thermal stabilizer.

Claims 89 and 90 are allowable because the prior art fails to teach or suggest a fuel comprising a plant oil extract; a carotenoid; and a thermal stabilizer selected various oils.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cephia D. Toomer
Primary Examiner
Art Unit 1714

10084833\051205


Notice of References Cited

Application/Control No.

10/084,833

Applicant(s)/Patent Under

Reexamination

JORDAN, FREDERICK L.

Examiner

Cephia D. Toomer

Art Unit

1714

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-4,504,499	03-1985	Finnan, Jeffrey L.	426/250
	B	US-5,705,526	01-1998	Fujiwara et al.	514/458
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V*	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)

Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.